IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1206 of 1996

in

SPECIAL CIVIL APPLICATIONNo 2602 of 1993

with

LETTERS PATENT APPEAL NO. 1306 OF 1996

in

SPECIAL CIVIL APPLICATION NO. 2602 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRAKUMAR NATHALAL SHAH

Versus

CENTRAL EXCISE AND CUSTOMS DEPARTMENT

Appearance:

MR MB GANDHI for Appellants

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE
Date of decision: 25/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals, which are instituted under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No.2602 of 1993. As the appeals involve determination of common questions of facts as well as law, we propose to dispose them of by this common judgment.

#. The appellants in Letters Patent Appeal No.1206 of 1996 are the original petitioners. They are the owners of Block No.4 situated in a building known as Stadium House, at Navrangpura, Ahmedabad. An area admeasuring 96.84 sq. metres was let out by the owners to Central Excise and Customs Department at the rent of Rs.1.25 per sq. feet by a lease deed which was to operate for a period of five years. The Directorate of Estates, Government of India, had issued office memorandum dated July 10, 1972 mentioning that while the lease was subsisting, the landlord was not entitled to increase in rent, but the same could be enhanced after the lease was determined on fulfilment of certain conditions stipulated therein. On expiry of the period of lease deed, the lease was terminated by the owners and the department was called upon to enhance the rent payable to the owners. However, no steps were taken by the department. Meanwhile, another office memorandum dated September 1, 1982 was issued by Directorate of Estates, Government of India, stipulating that the rent should be got reassessed from the Central Public Works Department ('CPWD' for short) on the expiry of period of five years from the date of original assessment and after every five years thereafter. The case of the petitioners was that no action was taken by the department either to get the rent assessed from CPWD or to revise the rent. According to the original petitioners, they were entitled to revision of rent for a period from September 1, 1982 to August 31, 1987 and September 1, 1987 to August 31, 1992 in view of the certificate issued by CPWD. Under the circumstances, the owners had filed Special Civil Application No.2602 of 1993 and prayed the Court to issue a writ of mandamus directing the respondents to approach the CPWD for reassessment of the rent of the property and to pay the reasonable market rent which may be assessed by the CPWD. It was also prayed to direct the respondents to execute a lease deed with effect from September 1, 1987 and to make payment of the rent at the

revised rate of Rs.5217/- per month. It was also prayed by the petitioners to issue a writ of mandamus directing the respondents to reassess rent or to get it reassessed through CPWD on the basis of the petitioner's application for the period from 1992 to 1997 and to make payment according new assessment from September 1, 1992 till the expiration of five years and to get new lease agreement executed for the said period.

#. Record of the case does not indicate that any affidavit in reply was filed on behalf of the department.

#. Learned Single Judge heard learned counsel for the parties and noticed that different certificates were issued by CPWD determining rent for different periods. On the basis of certificate dated October 24, 1994, the learned Single Judge held that the owners were entitled to rent of Rs.3170/- per month for a period from September 1, 1982 to August 31, 1987. The learned Single Judge has observed in the impugned judgment that the original respondents did not take any objection while direction was given to them to pay amount of rent at the rate of Rs.3170/- for a period from September 1, 1982 to August 31, 1987. The learned Judge further took into consideration the contents of certificate dated September 1, 1988 and held that the owners were entitled to rent of Rs.5031/- per month for the period from September 9, 1988 to August 31, 1992. In view of the contents of the certificate dated December 7, 1993, the learned Single Judge held that the owners were entitled to rent of Rs.8068/- per month for the period from September 1, 1992 to September 8, 1993, whereas they were entitled to rent of Rs.9603/- per month for a period from September 9, 1993 to September 8, 1988, in view of the contents of certificate dated December 17, 1994. In view of the above referred conclusion, the learned Single Judge directed the original respondents to fix the rent as indicated above for the different periods and further continue to pay the rent for a period of five years at the rate of Rs.9603/- per month as per the agreement giving rise to Letters Patent Appeal No.1306 of 1996 by the department. The original petitioners, who are the owners of the property, have filed Letters Patent Appeal No.1201 of 1996 against that part of the judgment by which they are denied interest on the arrears of rent to be paid to them.

#. We have heard learned counsel for the parties at length. The submission that the claim for rent from September 1, 1982 to August 31, 1987 is barred by principles of delay and laches and, therefore, the

impugned judgment should be set aside has no merits. Though the power under Article 226 to issue an appropriate writ is discretionary and inordinate delay in making the motion for a writ may be adequate ground for refusing to exercise the discretion, it is well settled that no hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and question of exercise of discretion has to be decided in view of the facts of each case. It is relevant to notice that the revision of rent was dependent on the assessment which was to be made by CPWD and CPWD made the assessment for the first on October 24, 1994. Though the original petitioner had made application dated September 21, 1981, requesting the department to revise the rent as per office memorandum of 1972, no action at all was taken by the department in terms of the said office memorandum. Thereafter, office memorandum dated September 1, 1982 was issued by Directorate of Estates, Government of India, directing the departments concerned to revise the rent on fulfilment of certain conditions. Even thereafter, no steps were taken by the department either to revise the rent or to get reasonable rent assessed by CPWD. The CPWD assessed the rent for the first time on October 24, 1994, after filing of the petition. Under the circumstances, it cannot be said that there was any delay on the part of the original petitioner in approaching the Court. The learned Single Judge while dealing with the submission advanced by the learned Additional Central Government Standing Counsel regarding delay and laches in filing the petition has adverted to several reported decision of the Supreme Court on the point and held that there is no justification in refusing relief of reasonable rent to the original petitioner on the basis of certificate which was issued in the year 1994 for the period from 1982 to 1987. We are in complete agreement with the view expressed by the learned Single Judge and we hold that the learned Single Judge was justified in entertaining the prayer made by the petitioner for refusing the rent for the period from September 1, 1982 to August 31, 1987.

#. The contention that the High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any

legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner should have been relegated to the alternative remedy available to him under the said Act also cannot be accepted at this stage. It may be stated that another owner of the premises had filed Special Civil Application No.6435 of 1991 claiming similar such relief and therein notice was ordered to be issued to the respondents, i.e. the department, at the admission stage. The department had filed reply contesting the petition, inter alia, on the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. Thereafter, Special Civil Application No.2602 of 1993, out of which Letters Patent Appeal No.1306 of 1996 arises, was placed for admission hearing and as petition involving similar question was admitted earlier, this petition was also admitted and Rule was issued therein. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see Hirday Narain v. Income Tax Officer, Bareilly, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to Special Civil Application No.2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness land willingness to pay rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month

with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to alternative remedy available to him under the Rent Act for the purpose of revision of rent from September 1, 1982 to August 31, 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though plea of alternative remedy available under the Rent Act was raised.

#. The contention that the determination of rent on the basis of average of two figures mentioned in different certificates is illegal and, therefore, the impugned should be set aside has no merits. It may be stated that the respondents had left fixing of the rent for 1987 onwards to the decision of the High Court. Having regard to the facts of the case, the learned Single Judge has taken average of the figures mentioned in different certificates for different periods. The method adopted by the learned Single Judge for determining rent on the basis of average cannot be termed either as illegal or arbitrary in any manner, so as to warrant interference of this Court in the present appeal. We are of the opinion that a just method was adopted by the learned Single Judge for the purpose of determining rent for different periods and, therefore, the appeal cannot be allowed on the ground that any illegality was committed by the learned Single Judge in determining the amount of rent.

#. Thus, we do no find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1306 of 1996 and the same is liable to be dismissed.

#. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be penalized. Having regard to the fair stand which was

taken by the department, as is reflected in its letter dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1204 of 1996 filed by the owner of the property claiming interest is also liable to be dismissed.

#. For the foregoing reasons, both the appeals fail and are dismissed with no orders as to costs.

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